

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1010 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new paragraph
- 2 and insert:
- 3 "SECTION 1. IC 8-1-2-89 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 89. (a) As used in this
- 5 section, unless the context otherwise requires, the following terms have
- 6 the following meanings:
- 7 (1) "Sewage disposal service" means any public utility service
- 8 whereby liquid and solid waste, sewage, night soil, and industrial
- 9 waste of any single territorial area is collected, treated, purified,
- 10 and disposed of in a sanitary manner, and includes all sewage
- 11 treatment plant or plants, main sewers, submain sewers, local and
- 12 lateral sewers, intercepting sewers, outfall sewers, force mains,
- 13 pumping stations, ejector stations, and all other equipment and
- 14 appurtenances necessary or useful and convenient for the
- 15 rendition of such service.
- 16 (2) "Sewage disposal company" means any natural person, firm,
- 17 association, corporation, or partnership owning, leasing, or
- 18 operating any sewage disposal service within the rural areas of
- 19 this state, and all provisions of this chapter pertaining to a public
- 20 utility shall apply with equal force and effect to a sewage
- 21 disposal company, except insofar as said provisions may be
- 22 inconsistent with specific provisions of this section.
- 23 (3) "Rural area" means territory lying within the state of Indiana
- 24 and lying outside the corporate limits of a municipality.
- 25 (4) "Certificate of territorial authority" means a certificate of
- 26 convenience and necessity issued by the commission pursuant to
- 27 this section, which said certificate shall be deemed an
- 28 indeterminate permit, unless expressly conditioned otherwise by
- 29 the commission when issued.
- 30 (5) "Notice of hearing" means notice of the time, place, and
- 31 purpose of a hearing, given by publication in at least one (1)

1 newspaper of general circulation in each of the counties in which
2 the particular sewage disposal company operates or proposes to
3 operate and given also in writing by United States registered
4 mail:

5 (A) to each other sewage disposal company operating in
6 territory contiguous to the territory in which the particular

7 sewage disposal company operates or proposes to operate;

8 (B) to each municipality in territory contiguous and nearest
9 to the territory in which the particular sewage disposal
10 company operates or proposes to operate; and

11 (C) to such other persons or entities which the commission
12 may from time to time require by its rules and forms;

13 all such notices shall be so mailed as to be received by the
14 recipients at least ten (10) days prior to any hearing, or as
15 otherwise required by the commission.

16 **(6) "Package sewage disposal company" means a sewage**
17 **disposal company that provides or will provide sewage**
18 **disposal service to less than five hundred (500) customers.**

19 (b) It is hereby declared to be in the public interest to provide for the
20 orderly development and rendering of sewage disposal service in rural
21 areas within the state of Indiana, and such public interest makes it
22 necessary and desirable that to the extent provided herein the holding of
23 a certificate of territorial authority should be required as a condition
24 precedent to the rendering of such service, and that such operation be
25 under the control, regulation, and supervision of the commission, and
26 such sewage disposal companies shall not be subject to regulation by
27 any municipality or county government or metropolitan regulatory body,
28 or any branch or subdivisions thereof or substitute therefor in the form
29 of special service districts, with the ~~exception~~ **exceptions** that: ~~said~~

30 **(1) a** sewage disposal company shall be subject to the
31 comprehensive plan, zoning, and subdivision requirements and
32 regulations of the governmental units having jurisdiction in the
33 area; **and**

34 **(2) a package sewage disposal company is subject to the**
35 **requirements set forth in subsection (m).**

36 However, all functions, powers, and duties of the state department of
37 health and the water pollution control board shall remain unaffected by
38 this section.

39 (c) No sewage disposal company shall commence the rendering of
40 sewage disposal service in any rural area in the state of Indiana in which
41 it is not actually rendering sewage disposal service, without first
42 obtaining from the commission a certificate of territorial authority
43 authorizing such sewage disposal service, finding that public
44 convenience and necessity require such sewage disposal service within
45 such rural area by such sewage disposal company, and defining and
46 limiting specifically the rural area covered thereby. No sewage disposal
47 company hereby required to hold such a certificate shall render any
48 additional sewage disposal service within such rural area to any extent
49 greater than that authorized by such certificate or shall continue to
50 render sewage disposal service within such rural area if and after such

certificate of territorial authority has been revoked or transferred as in this section provided, unless in such order of revocation or transfer the commission shall require continued service until a new sewage disposal company or municipality actually takes over such service. The commission shall not have the power to require extension of such service by any sewage disposal company into any additional territory than that defined and limited in such a certificate without the consent of such sewage disposal company.

(d) Whenever any sewage disposal company proposes to commence the rendering of sewage disposal service in any rural area, it shall file with the commission a verified application for a certificate of territorial authority to cover the proposed service. The commission shall by rule prescribe the form of the application and the information to be contained therein, **including information necessary to make a determination under subsection (m)**, and such application by any such company shall conform to such prescribed form. The commission shall set the matter for hearing and notice of such hearing shall be given to the parties and in the manner defined in this section. Any city may, and upon petition to the commission shall, be made a party to any service proposal if its territorial limits lie within five (5) miles of the area to be serviced under this section. **A verified application submitted by a package sewage disposal company must include a resolution in support of the verified application adopted by the county executive of the county in which the package sewage disposal company seeks to provide sewage disposal services.**

(e) If, after notice of hearing and hearing on any application for a certificate of territorial authority, the commission shall find from the evidence introduced at such hearing, including any evidence which the commission shall have caused to be introduced as a result of any investigation which it may have made into the matter, that the applicant has proved:

- (1) lawful power and authority to apply for said certificate and to operate said proposed service;
- (2) financial ability to install, commence, and maintain said proposed service; and
- (3) public convenience and necessity require the rendering of the proposed service in the proposed rural area by this particular sewage disposal company; however, in the event the service is proposed for a proposed rural real estate addition, division, or development, or any part thereof, the reasonably expected sewage disposal service requirements of the anticipated residents may be found to constitute such public convenience and necessity;

then the certificate of territorial authority, defining and limiting the rural area to be covered thereby, shall be granted to the applicant, subject to such terms, restrictions, limitations, and conditions, including but not limited to a reasonable time in which to commence operations, as the commission shall determine to be necessary and desirable in the public interest.

1 (f) In cases of applications filed by two (2) or more sewage
2 disposal companies seeking the issuance of a certificate of territorial
3 authority for the same area or areas or any conflicting portions thereof,
4 the commission may either consider such applications separately or by
5 consolidation of two (2) or more or all within a single hearing at its
6 discretion and shall have the power to issue its certificate after notice of
7 hearing and hearing to any single qualified sewage disposal company
8 for a particular rural area, or, in the event that the commission
9 determines and finds that two (2) or more or all applicants seeking the
10 same area or areas or any conflicting portions thereof are both or all
11 qualified, then the commission shall have the power to determine which
12 is the better or best qualified, or whether the same area or areas or any
13 conflicting portions thereof shall be divided between or among such
14 qualified applicants. However, in no event shall such area or areas or
15 portions thereof be greater than that for which the particular applicant
16 applied, unless such sewage disposal company shall consent and agree
17 in writing to such modification of its application and the issuance of
18 such modified certificate.

19 (g) After the issuance of such certificate, no other sewage disposal
20 company shall render sewage disposal service in the area or areas so
21 determined and so defined in any certificate of territorial authority
22 issued by the commission, except after notice of hearing and hearing,
23 and the determination and finding by the commission that public
24 convenience and necessity require that sewage disposal service in said
25 same area or areas be also rendered or offered by an additional or
26 another company, and the issuance of a certificate duly granted by the
27 commission as provided in this section.

28 (h) A sewage disposal company shall be required to furnish
29 reasonable adequate sewage disposal services and facilities for which
30 said service and facilities it shall be entitled to charge reasonable,
31 nondiscriminatory rates, subject to the jurisdiction of the commission
32 for the purpose of fixing said rates to be charged to patrons of such
33 sewage disposal company for sewage disposal service, and for such
34 purpose the commission is given jurisdiction to proceed in the same
35 manner and with like power as is provided by this chapter in the case of
36 public utilities.

37 (i) To encourage the installation of sewage treatment plants, and
38 sewers, mains, stations, and all other equipment and appurtenances for
39 rendering sewage disposal service in rural areas in close proximity to
40 municipalities, and to ensure that a sewage disposal company which had
41 made such installation in such area can recover the cost of its
42 investment, in the event that the area or areas or any part thereof
43 included within the territory granted under a certificate of territorial
44 authority shall be annexed by any municipality at any time within
45 twelve (12) years from the date that such certificate was granted, a
46 sewage disposal company operating under such certificate shall
47 continue to operate under such certificate of territorial authority, subject
48 to the exclusive jurisdiction and regulation of the commission, for the

1 unexpired portion of such period of twelve (12) years from the date of
2 granting such certificate, or, in the case of a determinate permit
3 specifying a term shorter than twelve (12) years, then for the unexpired
4 portion of such lesser period as specified by such permit from the date
5 of granting such permit. However, the foregoing provisions in regard to
6 continued operation within the corporate limits of a municipality after
7 annexation shall not affect the right of the sewage disposal company to
8 cease its operation of providing sewage disposal service within such
9 annexed territory prior to the termination of said twelve (12) year or
10 lesser determinate permit period, upon thirty (30) days written notice to
11 the commission, the municipality, and all patrons.

12 (j) Upon approval by the commission given after notice of hearing
13 and hearing, but not otherwise, any certificate of territorial authority
14 may:

15 (1) be sold, assigned, leased, or transferred by the holder thereof
16 to any sewage disposal company to which a territorial certificate
17 might be lawfully issued; or

18 (2) be included in the property and rights encumbered under any
19 indenture of mortgage or deed of trust of such holder;

20 or any sewage treatment plant or plants, sewers, mains, stations, and
21 equipment and appurtenances for the rendering of sewage disposal
22 service, or any part thereof, may be sold, assigned, leased, or transferred
23 by the holder thereof to any municipality if these assets lie within an
24 area which shall have been annexed by such municipality or lie within
25 the given radius of miles from the corporate limits of such municipality
26 into which it is authorized to render such services, if such municipality
27 is prepared to render a comparable sewage disposal service without loss
28 of continuity of service, and if the terms of such sale, assignment, lease,
29 or transfer are reasonable. However, once the commission has given its
30 approval to such transaction and the transaction itself is actually
31 consummated, the commission shall have no control over the sewage
32 disposal service henceforth rendered by such municipality as a
33 municipally owned utility (as defined in this chapter).

34 (k) Any certificate of territorial authority may, after notice of
35 hearing and hearing, be revoked by the commission, in whole or in part,
36 for the failure of the holder thereof to furnish reasonably adequate
37 sewage disposal service within the area or areas determined and defined
38 in such certificate of territorial authority, or for the failure of the holder
39 thereof to comply with any applicable order or rule prescribed by the
40 commission in the exercise of its powers under this chapter, or for
41 failure to comply with any term, condition, or limitation of such
42 certificate of territorial authority.

43 (l) After the commission revokes any certificate of territorial
44 authority under subsection (k) or after the county board of health
45 determines the existence of a serious health problem related to the
46 sewage disposal facility, the county commissioners of the county in
47 which the sewage disposal facility is located may acquire the facility,
48 subject to the approval of the acquisition by the county council, except

1 that the county commissioners may not acquire any facility already
2 acquired by any city or town. The county commissioners shall acquire
3 the sewage disposal facility by:

4 (1) gift, grant, purchase, or condemnation that is funded in the
5 same manner that cities and towns fund sewage treatment
6 acquisitions under IC 36-9; or

7 (2) a lease arrangement that is funded in the same manner that
8 cities and towns fund leases of sewage disposal facilities under
9 IC 36-9.

10 After acquisition, the county commissioners shall repair, operate, and
11 maintain the sewage disposal facility and charge user fees for these
12 services.

13 **(m) Before the commission may issue a certificate of territorial**
14 **authority to a package sewage disposal company, the commission**
15 **must determine that the package sewage disposal company is the**
16 **most appropriate provider of sewage disposal services for the**
17 **rural area covered by the certificate of territorial authority. The**
18 **issuance of a certificate of territorial authority to a package sewage**
19 **disposal company is subject to review and approval by the**
20 **department of environmental management."**

21 Renumber all SECTIONS consecutively.

(Reference is to EHB 1010 as printed February 17, 2006.)

Senator SIPES